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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 OMNI INNOVATIONS, LLC, *et al.*,

10 Plaintiff,

11 v.

12 SMARTBARGAINS.COM LP, *et al.*,

13 Defendants.

No. C06-1129JCC

ORDER

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15 This matter comes before the Court under Local General Rule 8(c). Plaintiff has
16 filed a “Motion for Recusal of the Honorable John C. Coughenour” in the above-captioned
17 matter. Dkt. # 35. Judge Coughenour declined to recuse himself voluntarily and the matter was
18 referred to the Chief Judge for review. Dkt. # 38. Plaintiff’s motion is therefore ripe for review
19 by this Court.

20 Section 455 of title 28 of the United States Code governs the disqualification of a
21 district judge. It states in relevant part: “Any justice, judge, or magistrate judge of the United
22 States shall disqualify himself in any proceeding in which his impartiality might reasonably be
23 questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

24 Whenever a party to any proceeding in a district court makes and files a timely and
25 sufficient affidavit that the judge before whom the matter is pending has a personal
26 bias or prejudice either against him or in favor of any adverse party, such judge
shall proceed no further therein, but another judge shall be assigned to hear such
proceeding. The affidavit shall state the facts and the reasons for the belief that

ORDER

1 bias or prejudice exists.

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3 A judge must recuse himself if a reasonable person would believe that he is unable to be
4 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). This is an
5 objective inquiry regarding whether there is an appearance of bias, not whether there is bias in
6 fact. Preston v. United States, 923 F.2d 731, 734 (9th Cir. 1992); United States v. Conforte, 624
7 F.2d 869, 881 (9th Cir. 1980); See also In Liteky v. United States, 510 U.S. 540 (1994)
8 (explaining the narrow bases for recusal). A litigant cannot, however, use the recusal process to
9 remove a judge based on adverse rulings in the pending case: the alleged bias must result from
10 an extrajudicial source. United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986).

12 In support of his motion for recusal, plaintiff cites statements made by Judge
13 Coughenour in Gordon v. Virtumundo, C06-0204JCC, the fact that a former judicial extern
14 works for defense counsel, a problem with service after plaintiff's counsel withdrew, and the
15 loss of evidence when Virtumundo seized plaintiff's business computers. As a threshold matter,
16 the Court must determine whether this motion for recusal is timely. Although the governing
17 statutes contain no explicit requirement of timeliness, "[i]t is well established that a motion to
18 disqualify or recuse a judge under 28 U.S.C. § 144 [as well as] ... § 455 must be made in a timely
19 fashion." Molina v. Rison, 886 F.2d 1124, 1131 (9th Cir. 1989). Allowing litigants to delay
20 raising allegations of bias would result in a waste of judicial time and resources (see In re
21 International Business Machines Corp., 618 F.2d 923, 933 (2d Cir. 1980)) and a heightened risk
22 that litigants would use recusal motions for strategic purposes (see Ex Parte American Steel
23 Barrel Co. and Seaman, 230 U.S. 35, 44 (1913)).

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26 Plaintiff filed this motion to recuse only after Judge Coughenour's adverse ruling

1 in another case, Gordon v. Virtumundo, C06-0204JCC, was affirmed on appeal. The risk that
2 plaintiff is using an allegation of bias to avoid an adverse decision on the merits is therefore
3 considerable: in effect, plaintiff is seeking to remove Judge Coughenour from this case because
4 of his performance while presiding over this and related matters. Because a judge's conduct in
5 the context of pending judicial proceedings does not constitute the requisite bias under § 144 or
6 § 455 if it is prompted solely by information that the judge received in the context of the
7 performance of his duties as the presiding judicial officer, bias is almost never established
8 simply because the judge issued an adverse ruling.
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10 Judge Coughenour's decisions and observations in Gordon v. Virtumundo, C06-
11 0204JCC, were based on the record before him, and plaintiff has not identified any legal or
12 factual error that could give rise to an inference of bias. In fact, the Ninth Circuit Court of
13 Appeals affirmed Judge Coughenour's decision in that matter. Nor do plaintiff's other
14 arguments suggest that Judge Coughenour is unable to be impartial. Former law clerks are
15 generally permitted to appear before the judge for whom they clerked after a year's absence: the
16 judicial officers of this district know most of the federal practitioners in this district and
17 regularly evaluate the legal merits of a case without regard to the identity of counsel. A rule
18 barring former law clerks and externs, much less their entire law firms, from appearing in a
19 particular court would be unreasonable and unjustified. Nor is there any indication that Judge
20 Coughenour was responsible for or knew of the service problems plaintiff encountered after his
21 attorney withdrew or that he directed or sanctioned Virtumundo's activities when seeking to
22 recover its attorney's fees.
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1 Having reviewed plaintiff's motion and the remainder of the record, the Court
2 finds that Judge Coughenour's impartiality cannot reasonably be questioned. There being no
3 evidence of bias or prejudice, plaintiff's request to remove Judge Coughenour from this matter is
4 DENIED.
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6 DATED this 6th day of October, 2009.
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9 Robert S. Lasnik

10 Chief Judge, United States District Court
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